

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
10-CA-235907	February 13, 2019

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Warrior Met Coal		b. Tel. No. (205)554-6150
		c. Cell No.
d. Address (street, city, state ZIP code) 16243 Highway 216, Brookwood, AL 35444	e. Employer Representative Barry Kimmel Mine Manager	f. Fax No.
		g. e-Mail barry.kimmel@warriormetcoal.com
		h. Dispute Location (City and State) Brookwood, AL
i. Type of Establishment (factory, nursing home, hotel) coal mine	j. Principal Product or Service coal	k. Number of workers at dispute location 2500

1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since about (b) (6), (b) (7)(C) 2018, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by discharging employees in retaliation for their safety complaints.

On (b) (6), (b) (7)(C) 2019, the Employer discriminated against employee (b) (6), (b) (7)(C) by firing (b) (6), (b) (7)(C) in order to discourage union activities or membership.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

(b) (6), (b) (7)(C)	
4a. Address (street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)	4b. Tel. No. (b) (6), (b) (7)(C)
	4c. Cell No.
	4d. Fax No.
	4e. e-Mail (b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filed in when charge is filed by a labor organization)

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge. (b) (6), (b) (7)(C)		Tel. No. (b) (6), (b) (7)(C)
By: (signature) (b) (6), (b) (7)(C)	(b) (6), (b) (7)(C) Print Name and Title	Office, if any, Cell No.
Address: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)	Date: February 13, 2019	Fax No.
		e-Mail (b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

(b) (6), (b) (7)(C)



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
233 Peachtree Street NE
Harris Tower Suite 1000
Atlanta, GA 30303-1504

Agency Website: www.nlr.gov
Telephone: (404)331-2896
Fax: (404)331-2858



Download
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Mobile App

February 14, 2019

(b) (6), (b) (7)(C)

Re: Warrior Met Coal
Case 10-CA-235907

Dear (b) (6), (b) (7)(C)

The charge that you filed in this case on February 13, 2019 has been docketed as case number 10-CA-235907. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney JOSEPH WEBB whose telephone number is (205)518-7518. The mailing address is 1130 22ND ST S RIDGE PARK PLACE STE 3400, BIRMINGHAM, AL 35205-2885. If this Board agent is not available, you may contact Resident Officer KATHERINE CHAHROURI whose telephone number is (470)343-7505.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

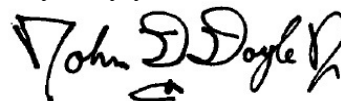
Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "John D. Doyle, Jr." with a stylized flourish at the end.

JOHN D. DOYLE, JR.
Regional Director



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February 14, 2019

Barry Kimmel, Mine Manager
Warrior Met Coal
16243 Highway 216
Brookwood, AL 35444

Re: Warrior Met Coal
Case 10-CA-235907

Dear Mr. Kimmel:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

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Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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February 14, 2019

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "John D. Doyle, Jr." with a stylized flourish at the end.

JOHN D. DOYLE, JR.
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

From: [Hensley, Guy](#)
To: [Webb, Joseph](#)
Subject: Warrior Met Coal, Case No. 10-CA-235907
Date: Tuesday, February 19, 2019 2:42:30 PM
Attachments: [Guy W. Hensley.vcf](#)

Dear Mr. Webb:

It was a pleasure talking with you today.

Per our conversation, I confirm that I will be the company's representative and point of contact (at least initially) in the above-referenced matter. I am attaching my vCard for your reference.

Guy Hensley
Counsel
Warrior Met Coal



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
233 Peachtree St NE
Harris Tower Ste 1000
Atlanta, GA 30303-1504

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February 20, 2019

(b) (6), (b) (7)(C)

Barry Kimmel, Mine Manager
Warrior Met Coal
16243 Highway 216
Brookwood, AL 35444

Re: Warrior Met Coal
Case 10-CA-235907

Dear (b) (6), (b) (7)(C) and Mr. Kimmel:

The Region has reviewed the charges filed against Warrior Met Coal, alleging that it violated the National Labor Relations Act. As explained below, I have determined that further proceedings on the charges should be deferred in accordance with the Board's policy under *Dubo Manufacturing Company*, 142 NLRB 431 (1963).

Deferral Policy: The Board's *Dubo* deferral policy provides that this Agency withhold making a final determination on certain unfair labor practice charges when a grievance has been filed by the Charging Party under the grievance/arbitration provisions of a relevant collective bargaining agreement, and there is a reasonable chance that use of the grievance/arbitration machinery will resolve or set at rest the dispute underlying the charges. This policy is based in part on encouraging stability in labor relations by deferring to the parties' chosen means of dispute resolution, as well as avoiding duplicative litigation in multiple forums. Therefore, if the grievances continue to be processed through the grievance/arbitration machinery, the Regional Office will defer the charges.

Decision to Defer: Based on the Region's investigation of this matter, I am deferring further proceedings on the charges or portion of the charges that alleges 8(a)(3) and 8(a)(1) violations. I am making this determination based on my belief that there is sufficient commonality between the facts and issues underlying the allegations of the charges and the facts and issues underlying the allegations of the grievances that there is a reasonable chance that the parties' resolution of

the grievances through the grievance/arbitration machinery will resolve or set at rest the dispute underlying the charge.

No Right of Appeal: Because the *Dubo* policy is based on the Charging Party's having filed and voluntarily processed grievances under the parties' dispute resolution process, there is no right to appeal the Region's deferral decision to the Office of the General Counsel.

Further Processing of the Charges: As explained below, while the charges are deferred, the Region will monitor the processing of the grievances and, under certain circumstances, may resume processing the charges.

Charging Party's Conduct During Dubo Deferral: Because *Dubo* deferral is dependent on the Charging Party's processing of grievances through the grievance/arbitration procedure, the Region will revoke deferral and resume processing of the related charge if any of the grievances are withdrawn by the Charging Party or a third party in control of the grievance/arbitration process, without an intervening settlement or other resolution of the issues on which deferral was based. However, in the event that a Charging Party elects to withdraw a grievance in lieu of *Dubo* deferral, and the Charged Party objects on the ground that deferral would be appropriate under the Board's separate, nonvoluntary deferral policy promulgated pursuant to *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United Technologies Corp.*, 268 NLRB 557 (1984), the Region will determine whether deferral under *Collyer* is appropriate and, if so, issue a separate notification to the parties addressing their obligations and rights under that deferral policy.

Charged Party's Conduct During Dubo Deferral: If the Charged Party prevents or impedes hearing and resolution of the grievances, raises a timeliness defense, or otherwise refuses to address the merits of the grievances in the grievance/arbitration process, I will revoke deferral and resume processing of the charges.

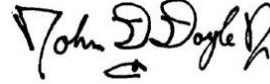
Inquiries and Requests for Further Processing: Approximately every 90 days, the Regional Office will ask the parties about the status of these disputes to determine if the disputes have been resolved and whether continued deferral is appropriate. However, I will accept and consider at any time requests and supporting evidence submitted by any party to this matter for dismissal of the charges, for continued deferral of the charges or for issuance of a complaint.

Notice to Arbitrator Form: If the grievances are submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form for each grievance to ensure that the Region receives a copy of an arbitration award when the award is sent to the parties.

Review of Arbitrator's Award: If the grievances are arbitrated, the Charging Party may request that this office review the arbitrator's award. The request must be in writing and addressed to me. The request should discuss whether the arbitration process was fair and regular, whether the unfair labor practice allegations in the charges were considered by the arbitrator, and whether

the award is clearly repugnant to the Act. Further guidance on the nature of this review is provided in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984).

Very truly yours,

A handwritten signature in black ink, appearing to read "John D. Doyle, Jr.", with a stylized flourish at the end.

JOHN D. DOYLE, JR.
Regional Director

Enclosures

cc: (b) (6), (b) (7)(C)
United Mine Workers of America,
Local 2397
16243 Highway 216
Brookwood, AL 35444

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
NOTICE TO ARBITRATOR

TO: _____
(Arbitrator)

(Address)

NLRB Case Number
10-CA-235907

NLRB Case Name: Warrior Met Coal

A determination has been made by the Regional Director of Region 10 of the National Labor Relations Board to administratively defer to arbitration the further processing of the NLRB charge in the above matter. Further, both parties to the NLRB case have agreed to proceed to arbitration before you in order to resolve the dispute underlying the NLRB charge.

So that the Regional Director can be promptly informed of the status of the arbitration, the undersigned hereby requests that a copy of the arbitration award be sent to Regional Director, Region 10, 233 Peachtree St NE, Atlanta, GA 30303-1504 at the same time that it is sent to the parties in the arbitration.

(Name)

(Title)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

National Labor Relations Board
and
Warrior Met Coal

CASE 10-CA-235907

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____
Warrior Met Coal

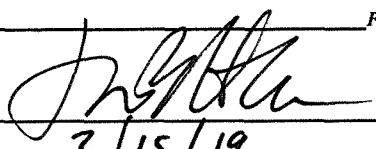
IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME:	John B. Holmes, III
MAILING ADDRESS:	1901 6th Avenue North, 2400 Regions Harbert Plaza, Birmingham, AL 35203
E-MAIL ADDRESS:	jholmes@maynardcooper.com
OFFICE TELEPHONE NUMBER:	205-254-1107
CELL PHONE NUMBER:	FAX: 205-254-1999
SIGNATURE:	
DATE:	3/15/19

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.